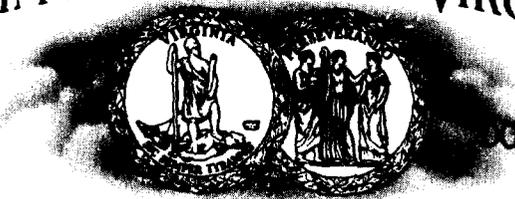


COMMONWEALTH OF VIRGINIA



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STATE CORPORATION COMMISSION DIVISION OF COMMUNICATIONS

September 12, 1997

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SEP 15 1997
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Office of the Secretary
Federal Communications Commission
1919 M Street, N. W., Room 222
Washington, D. C. 20554

Re: Policies and Rules Concerning
Unauthorized Changes of Consumers'
Long Distance Carriers
CC Docket No. 94-129

Dear Sir:

Enclosed please find comments of the Virginia State Corporation Commission Staff in the above referenced case.

Very truly yours,

A handwritten signature in cursive script, appearing to read "E. C. Addison".

Edward C. Addison
Director

ECA:jm
Enclosure

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D. C. 20554

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SEP 15 1997
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In the Matter)
)
Implementation of the Subscriber Carrier)
Selection Changes Provisions of the)
Telecommunications Act of 1996)
)
Policies and Rules Concerning)
Unauthorized Changes of Consumers')
Long Distance Carriers)

CC Docket No. 94-129

COMMENTS OF THE
VIRGINIA STATE CORPORATION COMMISSION STAFF

Edward C. Addison, Director
Division of Communications

P. O. Box 1197
Richmond, Virginia 23218
September 12, 1997

1. INTRODUCTION

The Division of Communications of the Virginia State Corporation Commission respectfully submits these Comments in response to the FCC's Notice of Proposed Rulemaking and Memorandum Opinion and Order on Reconsideration in this Docket, released July 15, 1997. We offer these Comments to assist the Joint Board and the FCC in the difficult and important considerations required by this Docket to ensure that rights of consumers are not violated.

2. BACKGROUND

The Virginia State Corporation Commission has seen the volume of complaints regarding the unauthorized switching of long distance carriers ("slamming") steadily rise among Virginia consumers although rules and regulations have been put in place by the FCC to deter this type of activity. In 1996 the Division of Communications handled 344 complaints involving slamming. Already in 1997 there have been 325 complaints. We believe only a few of these complaints are reported to the FCC once the issue has been resolved by the VSCC staff. Thus, the actual number of slammings is likely much higher than the FCC's records indicate.

Our comments address the effect on the consumer when an unauthorized switch of carrier occurs. Typical Virginia consumers learn that their interexchange carrier has been switched either by receiving written notification from the carrier of choice or by noticing unauthorized charges on their monthly local telephone bill. Once the charges are billed, consumers are faced with the task of calling a "Billing Questions" number that appears in conjunction with the fraudulent charges. It is not unusual for them to be referred to one or two additional companies. This causes great difficulty and frustration and often ends in

no satisfaction for the consumer as the unauthorized carrier refuses to credit the charges. Complaints filed with the VSCC indicate that representatives of a large percentage of the unauthorized carriers are abusive, will not return calls, or threaten disconnection if these sometimes outrageous charges are not paid. Charges billed by unauthorized carriers are usually much greater than those the consumer would have incurred using the carrier of choice. Although the offending interexchange carrier may offer to rerate the charges, the offer is often accepted by the consumer only to settle the issue, not because it is a satisfactory resolution. In addition, a very large percentage of these credits are never sent to the consumer's local exchange company resulting in these charges remaining on the customer's bill until they are recouped back to the unauthorized carrier by the LEC.

With the utilization of primary interexchange carrier (pic) codes being handled in a variety of ways by both local exchange companies and the interexchange carriers, there is no way to determine the actual role of the underlying facilities-based interexchange carriers. Business relationships between interexchange carriers and their resellers are neither made known to, nor regulated by, the VSCC. Often resellers utilize pic codes belonging to facilities-based carriers because they do not have a code of their own. This way, the local exchange company is totally bypassed if the consumer's authorized carrier happens to be the same facilities-based carrier that the unauthorized carrier is using.

When an unauthorized carrier change takes place, the consumer is not only overcharged but suffers other losses. There may be the loss of the ability to use carrier-based calling cards, without any notification, as well as any premiums or discounts earned

through enrollment in specific programs designed to provide added value based on network usage. This value is lost to the consumer until the situation can be rectified.

Another problem involves the loss of the right of privacy of the consumer. Once a consumer is slammed, customer proprietary network information (CPNI) becomes accessible to the unauthorized carrier.

3. ISSUES

A. Should slammed consumers be liable for any unpaid charges assessed by unauthorized carriers?

We believe consumers should not be liable for any charges assessed by unauthorized carriers. Thus far FCC rules and regulations and the provisions of the Telecommunications Act of 1996 designed to act as a deterrent have often proved ineffective in protecting consumer rights. We understand this is one of the primary reasons for the FCC's request for comments. Whereas it is unfortunate that the authorized carrier may incur a revenue loss in a slam, our primary concern is for the consumer.

Absolving slammed consumers from all liability of payment of unauthorized charges would indicate to offending companies that unethical practices will not be rewarded with additional revenue. Obviously penalties that have been imposed in the past have not been strict enough to achieve the necessary results. It is our belief that for every one consumer who reports a slam, there are many more slams that are not reported resulting in the unauthorized carrier receiving substantial unauthorized revenue.

To avoid the possibility of consumers purposely initiating a carrier change in order to claim to be the victim of a slam to avoid payment of charges, we recommend that a 60-

90 day limit be instituted after which the consumer would be responsible for charges. One normal billing cycle is not necessarily an adequate length of time for a consumer to notice unauthorized charges appearing on his bill.

B. Should unauthorized interexchange carriers be responsible for any premiums the slammed consumers would have received had they remained on their authorized carrier of choice?

In the event the FCC looks favorably upon our recommendation of not requiring payment of any unsolicited charges, we feel that it would not be appropriate for the consumer to receive any value-added premiums for the "lost" time in authorized carrier coverage. In the event the FCC determines that the consumer must continue to pay charges to an unsolicited entity in any amount, with the payment of the charges ultimately being transferred from the unauthorized carrier to the authorized carrier, we suggest that the consumer's authorized interexchange carrier should place the consumer on any calling plans formerly in place and provide appropriate premium discounts. In this scenario, if the unauthorized carrier has returned the amounts fraudulently collected to the authorized carrier, the authorized carrier could then make the consumer whole by applying the appropriate discounts. Unfortunately, the time, irritation, and harassment by the consumer cannot be reimbursed.

C. Should current procedures used in the verification of interexchange carrier changes be strengthened?

We feel that utilizing one of the four required verification methods as spelled out in the FCC rules is not adequate. A written letter of authorization (LOA) is the most reliable

way of ensuring carrier changes are authorized. The LOA should be a "stand-alone" document used in instances of both inbound- and outbound-generated telemarketing change requests. ANI has been a problem in inbound calls to carriers as the information an unscrupulous carrier has been able to determine from that inbound call is used for an unauthorized slam.

We believe no carrier changes should take place without a written confirmation.

D. Is a pic freeze anti-competitive?

A pic freeze on an account might be seen as an obstacle to achieving ease in changing an interexchange carrier, but it has been found to be the only effective option in a great number of instances for keeping the consumer presubscribed to the carrier of choice. In the event of a change in the local service provider, however, it would be the consumer's responsibility to choose new calling features and plans, choose their intraLATA and interLATA carriers and reinstitute a pic freeze. The pic freeze should not, and in fact could not, automatically transfer with a change in local service providers. It should remain in place, however, if the consumer initiates a long distance carrier change while remaining with the same local service provider.

E. Should incumbent LECs be subject to different requirements and prohibitions because of any advantages that their incumbency gives them compared to carriers that are seeking to enter the local exchange markets?

As long as interexchange carrier changes are "stand-alone" documents in writing which can be verified by the carrier initiating the change, it does not appear that any other proposed changes would give incumbent LECs an advantage over competitive LECs.

CONCLUSION

It is the opinion of the VSCC's Division of Communications that current FCC rules and regulations are not sufficient to deter and protect consumers from slamming. Rules must be revised to insure that unauthorized carriers receive no compensation from consumers who have been slammed. In addition, rules should be changed to require a written letter of authorization as the only acceptable verification method, and that no carrier change be permitted absent this verification. Pic freezes should continue to be authorized. It is clear that current rules have not worked, and the industry has been unsuccessful in policing itself of this fraudulent practice. Only with the implementation of these additional measures will consumers receive the protection they deserve

Respectfully submitted,
Virginia State Corporation Commission
Division of Communications



E. C. Addison, Director

Dated September 12, 1997